

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

BRITTANY HYDER,

Plaintiff,

v

Case No. 18-cv-11093

Honorable Thomas L. Ludington

MATTHEW LACOUNT, and  
MICHIGAN RECOVERY SERVICES, INC.,

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION, DENYING MOTION TO  
AMEND, GRANTING MOTION TO DISMISS, AND DISMISSING AMENDED  
COMPLAINT**

On April 5, 2018, Plaintiff Brittany Hyder filed this complaint and on May 1, 2018, she filed an amended complaint. ECF Nos. 1, 7. In the amended complaint, Plaintiff states that in January 2016, she purchased a 2009 Pontiac G8 from Grand Blanc Nissan and financed the vehicle through Santander Consumer USA (“Santander”). ECF No. 7 at 4. Plaintiff ultimately defaulted on her loan with Santander. *Id.* Santander hired Defendant Michigan Recovery Services, Inc. (MRS) to locate the vehicle. *Id.* Defendant Matthew LaCount was an employee of MRS. *Id.* Plaintiff alleges that LaCount “attempted to locate the vehicle in an effort to effectuate the repossession” and that “[i]n connection with Mr. LaCount’s location attempts, he utilized social media, (Facebook)...specifically notified third-parties that Plaintiff allegedly owed a debt, causing Plaintiff substantial embarrassment, emotional distress and humiliation.” *Id.* at 4–5.

In her first amended complaint, Plaintiff brought a claim under of the Fair Debt Collection Practices Act and the Michigan Collection Practices Act. *Id.* at 6–8. On May 22, 2018, Defendants filed a motion to dismiss for failure to state a claim. ECF No. 10. Judge Morris recommended granting Defendants’ motion to dismiss because Defendant MRS’s principal business was

repossession, not monetary debt collection. ECF No. 18. Furthermore, Plaintiff did not plead any facts that would indicate that Defendants threatened to take a nonjudicial action in order to repossess her vehicle. *Id.* Judge Morris recommended that the Court decline exercising supplemental jurisdiction over Plaintiff's state law claims since the federal claims should be dismissed.

On July 3, 2018, Plaintiff filed a motion to amend her complaint. In her motion, she states that LaCount "never located the vehicle and Defendants had no present intention to take possession of the vehicle." ECF No. 16 at 10. She also claims that "Plaintiff never saw Defendants attempt to repossess her vehicle" nor did Plaintiff ever meet with "Mr. LaCount or any other employee of MRS." *Id.* at 11 However, in her second proposed amendment, Plaintiff claims that the creditor "hired Defendant MRS to repossess the vehicle in 2018" and that Defendants "attempted to locate the vehicle in an effort to effectuate the repossession." ECF No. 16-1 at 4-5. Judge Morris recommended denying the motion because the proposed new allegation was conclusory and contradicted other statements by Plaintiff. ECF No. 18 at 7.

Although Judge Morris's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 18, is **ADOPTED**.

It is further **ORDERED** that Defendant's motion to dismiss, ECF No. 10, is **GRANTED**.

It is further **ORDERED** that Count I and Count III Subsections (b) – (d) of Plaintiff’s first amended complaint, ECF No. 7, are **DISMISSED** with prejudice.

It is further **ORDERED** that Count II and Count III Subsection (a) of Plaintiff’s first amended complaint, ECF No. 7, are **DISMISSED** without prejudice.

It is further **ORDERED** that Plaintiff’s motion to file an amended complaint, ECF No. 16, is **DENIED**.

Dated: October 16, 2018

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 16, 2018.

s/Kelly Winslow  
KELLY WINSLOW, Case Manager